

OGC HAS REVIEWED.

Approved For Release 2001/09/01 : CIA-RDP81-00314R000600010003-7

STATINTL MEMORANDUM FOR : [REDACTED] 4 June 1979
Legislative Counsel

STATINTL FROM : [REDACTED]
Assistant Legislative Counsels

SUBJECT : Classification and Compensation Act of 1979

1. Action Requested: Paragraph three contains a recommendation for your approval. (U/IUO)

2. Background: The undersigned met on 4 June 1979 with Messrs. Raymond Weissenborn, Assistant Director for Policy Analysis, Office of Personnel Management and Robert M. Thrash of his office. Since our earlier efforts to convince Office of Management and Budget (OMB) staff personnel of the veracity of our arguments re this Agency's need for exemption from Section 6 of the new Chapter 50 of the Classification and Compensation Act of 1979 (C&CA) had been poorly received, we determined that it could not hurt to speak with the bill's drafters in a final effort to get our point of view across to someone within the Administration. (U/IUO)

In a more thorough form than appears herein we detailed the following arguments to the gentlemen from OPM:

- DCI primary authority abrogated by proposal.
- Conflict of law created by two "notwithstanding" provisions in diverse bills, i.e. C&CA & CIA Act of 1949.
- Argument not with Presidential authority to modify or abolish systems but rather with intervention by outside agency, i.e. OPM.
- President already has authority in fact as chief of Executive Branch.
- OPM does not/should not want to become involved in classified National Security matters.
- Administration and President have consistently stood for less vice more dissemination of classified intelligence material within the Government.
- Legislative history since 1947 has pointed us in entirely different direction than this one item in one bill. Most recent and telling example is all but total CIA exemption from Civil Service Reform Act of 1978, of which C&CA is but a second stage.

After some discussion the gentlemen agreed that we had made a good case for exemption, particularly since we are exempted from other parts of reform package. They asked that we address a letter to OPM Chairman Alan K. "Scottie" Campbell making the points that we had made to them.

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While noting that it was too late to amend the current version of the C&CA which will be introduced at 1100 hours on Wednesday, 6 June 1979, it was agreed that a Committee amendment would be a likely possibility. On this note we explained to the gentlemen that the same approach had been taken on the Civil Service bill with the strong support of Messrs. Campbell, Sugarman and Swygert of OPM (then Civil Service Commission). (U/IUO)

3. Recommendation: That you forward for the signature of the Director the attached letter to Chairman Campbell explaining our position and requesting his assistance. A courtesy copy of the letter will, with your approval, also be forwarded to Mr. Weissenborn. (U/IUO)

STATINTL



Assistant Legislative Counsel

Assistant Legislative Counsel

Approval: _____

Disapproval: _____



Washington, D.C. 20505

OLC 79-0114/h

Honorable Alan K. Campbell, Director
Office of Personnel Management
Washington, D.C. 20415

Dear Mr. Campbell:

I am writing to request your assistance in a matter of great importance.

As you are aware, the unique nature of the Central Intelligence Agency and the broad authorities accorded its Director under the National Security Act of 1947 and the CIA Act of 1949 have been reaffirmed consistently by the Legislative and Executive Branches since the Agency's inception. One area in which this has particularly been the case is in connection with personnel matters.

The Director of Central Intelligence has, by virtue of section 8(a) of the CIA Act of 1949 (50 U.S.C. 403j), an exceptional and comprehensive mandate in the personnel field. The most recent reaffirmation of Executive and Congressional intent in this important area is the Civil Service Reform Act of 1978. The Agency was exempted from all of the major provisions of that law. These exemptions were granted principally because of Executive and Congressional recognition that it would be impossible for the CIA to remain effective if it were subject to laws requiring participation in government-wide personnel programs or permitting access to CIA personnel records by other agencies. The Congress recognized, moreover, that to subject the CIA to such requirements would be to directly contravene the statutory responsibility of the Director of Central Intelligence for the protection of intelligence sources and methods.

Accordingly, I am greatly troubled by section 6 of the newly proposed Classification and Compensation Act of 1979 which would, by adding a new Chapter 50 to Title 5 of the United States Code, grant the President the authority to "... establish, modify, consolidate, or abolish Federal premium pay and allowances provisions" While the drafters of this legislation exempted from the proposed authority "[premium pay and allowances provisions] ... relating to employment in foreign areas, ..." this exemption does not fully meet the special circumstances and needs of the Central Intelligence

Agency. My Legislative Counsel has made numerous requests to the Office of Management and Budget for a total exemption of the CIA from this section. As now drafted, Chapter 50 would dramatically change the existing situation. The Central Intelligence Agency is presently specifically exempted by statute from the Classification Act of 1949 (5 U.S.C. 5102), and by Civil Service Commission regulation from all of the premium pay requirements of subchapter 5 of Chapter 55 of Title 5. OMB has, unfortunately, not been responsive to our concerns.

I do not, of course, question the President's authority to modify, revamp or even abolish certain pay and allowance provisions, should he deem it desirable. As head of the Executive Branch he already has the inherent power to do so. I must, however, prevent any derogation of my ability to safeguard information whose protection is my personal statutory responsibility. As currently drafted, Chapter 50 leaves open the possibility of a delegation of Presidential authority opening sensitive CIA personnel matters to review by outside parties. This would be in contradiction to 30 years of Legislative history and Executive practice; it would also run counter to the President's expressed desire to reduce the proliferation of access to sensitive intelligence information.

On 4 June 1979 representatives of my Office of Legislative Counsel met on this matter with Messrs. Raymond C. Weissenborn and Robert M. Thrash of your Office of Policy Analysis. Your officers were sympathetic to our concerns and suggested, since the bill could not be changed prior to introduction, that I bring this matter directly to your attention so as to enlist your support in effecting a remedy.

I have enclosed for your use copies of two letters to OMB from my Legislative Counsel which contain our detailed arguments and suggested amendatory language. I hope that our staffs will be able to work together to solve the problem.

Yours sincerely,

STANSFIELD TURNER

Enclosures

WASHINGTON, D.C. 20505

Legislative Counsel

25 APR 1979

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

We have received a draft of the most recent changes to Section 5949 and the new Chapter 50 of the Administration's proposed "Classification and Compensation Act of 1979."

While we are pleased to note that cognizance has been taken of our position that the Central Intelligence Agency must be exempted from Section 5949, serious problems remain with regard to the scope and coverage of Chapter 50. On its face, elimination of the Compensation Agent from Chapter 50 would seem to rest the powers described in that Chapter in the President. If this were actually the case we would, of course, take no issue with the proposal. In practice, however, the President undoubtedly will designate an agent to recommend what premium pay and allowance provisions should be established, modified or abolished. It is also clear that this agent will in all likelihood be embodied within the Office of Personnel Management (OPM).

While employment in foreign areas is not covered in Chapter 50, many of CIA's premium pay and allowance provisions would be subject to the Chapter. Thus, the OPM in investigating such pay systems and allowances would, as we have noted previously, gain heretofore unauthorized access to sensitive CIA information and files.

Rather than repeat our previous comments on this subject, I would call to your attention paragraphs three through seven of my letter of 22 March 1979 (copy enclosed). The arguments contained therein, although directed toward the then-proposed Compensation Agent, are of equal applicability to the OPM. Our position on this matter is in conformity with President Carter's expressed desire to limit, indeed to reduce, the proliferation of access to sensitive intelligence information within the government.


The vesting of any authority over Central Intelligence Agency personnel matters in the OPM would create conflict of law problems. Section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) gives the Director of Central Intelligence unfettered authority over the Agency's personnel systems. Diminution of this authority would have an inimical affect on the ability of the Agency to carry out its assigned mission and on the ability of the Director of Central Intelligence to fulfill his statutory responsibility for the protection of intelligence sources and methods. Therefore, we again recommend that the draft bill be amended as follows:

Amend Subsection 5001(a) by inserting after the phrase "United States Postal Service": "or an employee of the Central Intelligence Agency".

I would appreciate your advising us as to the intentions of your office regarding this proposed amendatory language.

Sincerely,

SIGNED


Legislative Counsel

STATINTL

Enclosure
As stated

WASHINGTON, D.C. 20505

Legislative Counsel

22 MAR 1979

Mr. James M Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on the most recent draft of the "Classification and Compensation Act of 1979".

I am disappointed to note that the draft falls seriously short of reflecting the Agency's suggestions contained in my letter of 20 January 1979, and communicated in subsequent oral presentations made by members of my staff.

The importance of protecting intelligence sources and methods, and of preserving the flexibility required for the effective conduct of the Central Intelligence Agency's foreign intelligence functions were recognized by both the Administration and the Congress when the Agency was exempted from all of the major provisions of the Civil Service Reform Act of 1978. The same considerations should apply with regard to the Classification and Compensation Act of 1979.

Section 6 of the new draft would add a new Chapter 50 to Title 5 of the United States Code. Under Section 5001, the "Compensation Agent" and its staff would have access to information directly pertaining to intelligence sources and methods. The revisions now contained in the draft (exempting employment in foreign areas with regard to pension pay and allowances in Section 5001(b)) do not adequately meet our needs.

The draft, for example, would eliminate for purposes of the proposed Act the exemption to the rule making provisions of the Administrative Procedure Act contained in Section 553(a). This would result in the subjection of some of CIA's most sensitive material to various forms of public disclosure. Under subsection 553(c) of Title 5, for example, there could be public participation in Agency rule making related to matters covered by the Classification and Compensation Act; a result that would be diametrically opposed to the purposes of both the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, and to the position consistently taken by this and previous Administrations on similar matters.

Under the provisions of the latest draft, the Compensation Agent and its staff would also possess, inappropriately in our view, the authority to make recommendations impacting upon the mission and substantive functions of the Central Intelligence Agency. In addition, it is implicit in the draft bill that the Office of Personnel Management's administration of modifications in pay systems or premium pay or allowance provisions under Section 5001 would require continuing access to information pertaining to intelligence sources and methods and could place OPM in the position of affecting substantive Central Intelligence Agency functions.

The Central Intelligence Agency must retain maximum flexibility to carry out its mission and functions successfully, a fact which has been reflected in Administration policy in areas such as those covered by the draft Classification and Compensation Act. The flexibility of the Director under 50 U.S.C. 403j to operate and adapt the Central Intelligence Agency's personnel system in order to meet the Agency's unique personnel requirements and the ever-shifting exigencies of intelligence collection and foreign affairs would be seriously impaired by Section 5001.

I strongly urge, therefore, acceptance of the following amendments:

1. Section 5001(a): Line 13 on page 40 of the March OMB draft should be amended as follows:

"...States, but does not mean an employee of the Central Intelligence Agency."


2. Section 5949(a) "Staffing Differentials:
Line 21 on page 32 should, for the same reasons
outlined above in connection with Section 5001(a),
be amended to read:

"...prescribe, but does not include
compensation systems of the Central Intelligence
Agency."

The opportunity to again comment on this draft bill is appreciated. We firmly believe that the amendments specified above must be made in order to prevent the erosion of key statutory authorities of the Director of Central Intelligence and to preserve the flexibility which is critical to successful accomplishment of the Central Intelligence Agency's mission. We stand ready to provide whatever further assistance may be necessary.

Sincerely,

SIGNED


Legislative Counsel

STATINTL

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5.		Note and Return
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REMARKS



STATINTL

Deadline 8 June

Telephoned concurrence 0945 hours 8 June 79.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Classification and Compensation Act

FROM	EXTENSION	NO.
Chief, Legislation Division, OLC	6126	PERS 79-3558
		DATE
		7 June 1979

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		

1. DDA 7D24 (Don Wortman)

2. OP 5E58

3. OGC 7D07

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15.

Notwithstanding our repeated efforts to effect necessary changes with regard to the troublesome portions of Section 6 of this legislation, OMB on 6 June 1979 forwarded the bill to Congress for introduction.

Representatives of the Legislation Division on the same day met with representatives of the Office of Policy Analysis, OPM, who were responsible for drafting the legislation. As the attached memorandum to the Legislative Counsel explains, we were successful in securing OPM staff concurrence with our position and agreement to support our effort to amend Section 6. OPM staff suggested we make our views known to OPM Director Campbell via a letter from the DCI. That letter is attached for your review and concurrence. Once OPM Chairman Campbell has received the DCI's letter we will make joint overtures to OMB calling for transmittal to Congress of an Administration amendment exempting CIA from coverage under Section 6 of the bill. We will also be working along similar lines with the NSC Staff.

We would like to get the attached letter to the DCI asap. To cut down the coordination time I would ask that you register your views by phone (6126) by 4:00 p.m. Friday, 8 June.

STATINTL